

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 589 of 1997

in

SPECIAL CIVIL APPLICATION No 3550 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT MINERAL DEVELOPMENT CORPORATION

Versus

HABIBKHAN RAHEMANKHAN PATHAN

Appearance:

MR VH THAKORE for Appellant
MR HR LATHIGARA for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 21/03/98

ORAL JUDGEMENT

1. This appeal is filed against an interim order passed by the learned Single Judge in Special Civil

Application No.3550 of 1997. That petition was filed by respondent No.1-original petitioner for the following reliefs in terms of paragraph 22:-

- "(a) to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent No.2 to make the payment of octroi dues from 1.7.96 onwards to the petitioner forthwith.
- (b) pending the hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct to make the payment of octroi dues from 1.7.96 onwards, as per the stock register forthwith.
- (c) This Hon'ble Court may be pleased to call for the stock register maintained by the respondent no.2 for the goods imported by it.
- (d) Costs may be provided.
- (c) Any other and further relief/s, which this Hon'ble Court deems fit be granted, in the interest of justice."

2. The appellant is the Corporation, a Government undertaking, against whom, according to the petitioner-octroi collector, substantial amount of octroi is due. On 9th May, 1997, when the petition came up for hearing, the learned Single Judge passed the following order:

"Mr. V.H. Thakore, learned advocate appears for the second respondent. Heard the learned counsel appearing for the parties. It is evident that despite the order of vacation of the interim relief granted by the appellate committee of the District Panchayat, the second respondent has not paid the amount of octroi. By way of interim relief, the respondent No.2 shall pay the due octroi amount during the relevant period as per their stock register on or before 2.6.97. S.O. to 23.6.97."

3. As direction was issued to respondent No.2 (present appellant) to pay the amount within a stipulated period, the appellant approached this Court by filing

present appeal which came for hearing before a Vacation Judge on May 22, 1997 which was admitted. In Civil Application 5373 of 1997, the following order was passed :

"Rule. Ad-interim order in terms of paragraph 2(a) on condition that the applicant continues to pay the octroi to respondent No.2-Panchayat regularly."

A statement is made by the learned counsel for the appellant that the said payment is already made by the Corporation.

4. Being aggrieved by the order passed in Civil Application No.5373 of 1997, the original petitioner filed Civil Application No.9960 of 1997 to vacate interim relief granted in Civil Application No.5373 of 1997. A prayer is made that the appellant-Corporation be directed to forthwith produce before the Court accounts and abstract of the Registers of goods and be directed to deposit the amount of octroi.

5. In our opinion, it would not be proper or advisable to express any opinion one way or the other on merits of the matter at this stage when petition is pending before the learned Single Judge. A short question before us is whether during the pendency of petition, a direction of a mandatory nature ordering the appellant-Corporation to pay the amount could have been made by the learned Single Judge. It is stated by the learned counsel for the appellant that the appellant is not liable to pay octroi. We are of the opinion that the learned Single Judge, during the pendency of petition, ought not to have passed an order of mandatory nature in the petition filed by octroi ijaredar directing the Corporation to pay octroi to the petitioner-octroi contractor, without adjudicating the question and before final disposal of Special Civil Application. To that extent, in our opinion, the order deserves to be quashed and set aside.

6. At the same time, however, when it is the case of the petitioner that the appeal filed by the appellant-Corporation is dismissed by the District Panchayat under the Gujarat Panchayats Act, 1993, it would be in the interest of justice if during the pendency of the proceedings an appropriate direction is issued. Mr. Gandhi, learned counsel for the applicant in Civil Application No.9960 of 1997 submitted that the Court may direct the appellant-Corporation to deposit the

entire amount found due and payable towards octroi. On the other hand, Mr. Thakore submitted that, at the most the Corporation may be directed to deposit 10% of the amount. He further submitted that the Corporation has made an application to the Government for grant of exemption and in reasonable time, the said application will be decided by the Government.

7. In the facts and circumstances of the case, in our opinion, ends of justice would be met, if the appellant-Corporation is directed to deposit 25% of the amount due and payable according to its register within four weeks from today. Such amount will be invested by the Registry in any nationalised bank/Government security initially for six months and, if, by that time, the petition is not disposed of, it will continue to be reinvested on the same terms and conditions till the petition is finally disposed of. The appellant will also furnish bank guarantee for 25% amount.

8. As and when final order will be passed, the learned Single Judge will pass appropriate order including the amount deposited and invested in pursuance of this order.

9. To the extent indicated above, the appeal stands allowed. In the facts and circumstances, no order as to costs. Liberty to apply in case of difficulty.

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